93-855

No._____

Supreme Court, U.S.
FILED
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1993

JAIME BANUELOS, MARCO T CENTENO, MARIA DE LOS ANGELES CASAS, SAMUEL RODRIGUEZ, LORENZO GONZALEZ, BERTHA ANDRADE, MANUEL GONZALEZ, VICTOR OROZCO, VICTOR LOPEZ BY MARIA LOPEZ (Widow) TOMAS JIMENEZ, FRANK HUIZAR, RAFAEL HERNANDEZ, JESUS NAVARRO, ADAN ESPINOZA, JAIME BARRIENTOS, HUMBERTO LOPEZ, MANUELA GARCIA.

PRO SE — PETITIONERS

vs

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE
HEARING OFFICER

RESPONDENT

TRANSPORTATION LEASING COMPANY
(Formerly GREYHOUND LINES, INC
BORTISSER TRAVEL SERVICE
GREYHOUND LINES, INC
G.L.I HOLDING COMPANY
BUS WASH, INC — REAL PARTIES IN INTEREST

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEAL OF THE 9TH CIRCUIT------

PETITION FOR WRIT OF CERTIORARI

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CONTINUE

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QUESTIONS PRESENTED FOR REVIEW

1. Did the Court of Appeals for the Ninth Circuit has render an opinion and Memorandum August 18, 1993 that avoid confrontation with the Immigration Reform Control Act (IRCA 1986) under Title 8 U.S Code Section 1324b or has decide a federal question in a way, conflicting with IRCA 1986 in contravertion with section 102 of the Act as enacted by Congress and has departed from the accepted and usual course of judicial procedures so far sanction by IRCA 1986.

2. Did a federal question before the Ninth Circuit and the lower Agency, OCAHO involves a question of paucity case law and is an exceptional importance for the uniformity with IRCA 1986 for a national application, or rule that need national uniformity and final rule at the SUPREME COURT, a question of Citizen Status discrimination, a prima facie case, since IRCA continue Mo-

difying SUPREME COURT case on alienage Espinoza v Farah Mfg 414 U.S 86 (1973)

3. Did a federal question before the Ninth Circuit has not been considered and settled by the United States Supreme Court, a question under an Unfair Immigration Related Employment Practice cover by IRCA 1986 as enacted by congress, a question of Citizen status provision in contravertion with Section 102 of the Act IRCA 1986.

4. Did the Court of Appeals of the 9th Circuit Denied a due process of law in refusing to focus on this IRCA case and refusing to issue the due publication pursuant to circuit Court Rule 36-4 of the United States Court of Appeals for the Ninth Cir.duly requested by the Department of Justice which conflict with the mandate issue Oct 12, 1993. Whether this cause was heard by the transcript and record and not by the duly oral argument schedule August 3, 1993 improperly serve two days after the hearing August 3, 1993.

5. Did a federal question concerning Immigration Reform Control Act IRCA 1986 before the Ninth Circuit have been not consider its proper standard of review, a reasonable basis in law and within an area of regulations commmitted by congress enacting the law (See NLRB v Insurance Agents International Union 361. U.S 477 (1960) Immigration Reform and Control Act of 1986(IRCA 8 U.S.C 1324b (a) (A) (B) Public Law L No. 99.603 100 Sta 3359 (1986) Immigration and Nationality Act 1990 (INA 1990)

6.Did the 9th Circuit render an opinion that is conflicting with the standard of review Administrative Procedures Act that Review an IRCA decision is to review the Chief Administrative Officer (CAHO) not an earlier decision of the ALJ whether the Chief Administrative Hearing Officer declare his position September 1, 1993 Pursuant to circuit Court Rule 36-4 U.S Court of Appeal for the 9th Circuit. Whether the CAHO ob-

jected the findings of the Administrative Law Judge and question the Decision Memorandum of the 9th Circuit August 18, 1993 in conflict with the Mandate Oct 12, 1993

7. Did the 9th Circuit render an opinion August 18, 1993 that conflicted with OCAHO cases concerning retaliation and intimidation under 28 C.F.R & 44.201 in affirming ALJ Attorney fees in his contention that the Complainants Banuelos's claims attempted to bring the same claim repeately when IRCA 1986 Provisions authorized in its agreements with the EEOC and others forums for a repeated IRCA charges as condition presendent for equitable tolling warrant 180 days period statute of limitation.

8. Did the 9th Circuit opinion on attorney fees conflicted with IRCA OCAHO cases Unfair Immigration Related Employment Practice as seems to appear to be little or no circuit court case law holding that pro se complainants in a case brought under sec-

tion 1324b Title 8 U.S Code, can be held responsible for attorneys fees when the Complainants have attempted to bring the same claims repeatedly even if previous court have found lack of merit.

9. Did the 9th Circuit Court or Appeals render an opinion without considering GLI-G.L.I HOLDING COMPANY admitted their liability base on this case. First as the real employer of Complainants and second submitted complainant clams at the Bankruptcy Court Brownsville Texas that were confirmed and order claims liquidation.

10. Did the 9th Circuit overlooked or misapprehended that there is little, if any, circuit court case law affirming the findings of an Administrative Law Judge that summary judgment is proper in a section 1324b case under disparate treatment theory, where the complainants has failed to show that the nondiscriminatory reason given for the employer's

action is a mere pretex although it seems clear that the substantial evidence brought by the Complainants show that indeed there was a discrinatory citizens status present.

11. Did the 9th circuit render a decision that did not consider the subcontracted agencies under IRCA provisions and has wrongful declare that under the authority of 28 C.F.R 68.37(b)(1),ALJ can dismiss an Unfair Immigration Related Employment Practice when such authority do not exist 28 C.F.R 68.37 refer to formal hearings and a Complaint under IRCA can only be dismiss under a Final Determination 8 U.S C 1324b (g) (1) (3)

12. Did the 9th Circuit render an opinion concerning Bus Wash,Inc a Subcontracted agency of Greyhound Lines, Inc conflicted with U.S v Todd Corporation 900 F 2d 164,

165 (9th Cir. 1987) when Bus Wash, Inc a Sub-contracted agency of Greyhound Lines, Inc admitted its policies on non - citizens against citizens and nationals of the United States in its hiring preferences, refussing citizens of the United States.

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OCAHO Case 91200197 August 3,1992.... 23-29

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Adams v Reed
567 F 2d 1283-1286-87 16 FEP 1040-
1042 (5th Cir. 1978)..... 27

Bethishou v Ohmite Manufacturing
OCAHO Case No: 8900175 August 2, 1989 22-28

Baker v Stuart Broadcasting Co.,
560 F 2d 389 (8th Cir. 1977)..... 26

Bell v City of Kellogg,
922 F 2d 1418 1445(9th Cir. 1991).... 4

Colby v J.C Pennedy Co.Inc
811 F 2d 1492(9th Cir. 1983)
Cet denied 467 U.S 1255(1984)..... 26

Cook v Spilman 806 F 2d 948, 949(9th Cir.
1986..... 4

Enrique and Merlinda Martinez d.b.a Enrique Restaurant vs U.S Dept of Justice
OCAHO on Petition for Review Case:
91-4792 (5th Cir. 1992)..... -29

Espinoza v Farah Mfg
414 U.S 86 (1973) 38L Ed 287,94 Ct. 334..... iii-15-29
League of United Latin American Citizens vs Pasadena Independent School District
662, F Supp. 443,449 n 6(S.D Texas 1987..... 26-29
Lowe v City of Monrovia
775, F 2d 998, 1007 (9th Cir. 1985... 7-25
McDonnel Douglas Corp. v Green
411 U.S 792-36
L Ed 2d 668,93 Ct 1817 (1973)..... 29
Maka v Immigration & Naturalization Service 904 F 2d 1351 1355(9th Cir.1973) 24 -28
Martinez Rosita U.S v Marcel Watch Corporation OCAHO Case No: 89200085 March 22, 1990..... 28
Mitchell v Office of Los Angeles County
805 F 2d 844, 346(9th Cir. 1986..... 3
Kobdish The Frank Amendment to the Immigration Reform and Control Act of 1986 A Labyrinth for Labor Law Liti- 18-28

gators 41 South Western L.J 667,
691 (1987..... 18
Natividad Adame Gomez, United States
of America v Mojave,Inc d.b.a Ca-
Casa Jose Cafe, Texas Corporation
OCAHO No: 92B00162 Ref. 473
Undated..... 28
NLRB v Insurance Agents International
Union 361 U.S 477 (1960)..... iv- 15-29
Preiter 44 FEP at 1003,Citing Douglas
v Anderson 656 F 2d 528,551(9th Cir..
1981..... 22
Rios v Marshall 530 F Supp 351, 360-61
(S.D.N.Y 1981)..... 20
Salermo Stephen J vs ICL Retail Systems
Inc OCAHO 92B00041 Sept 17,1992..... 22-28
Texas Dept of Community Affairs v Burdi-
450 U.S 248 (1981)..... 24-29
Thomas v Rohner Ghering & Co.
582 F Supp 669,672-73(N.D.. 19
Trevino v Celanese Corp.
701 F 2d 397,403 (5th Cir 1982)..... 26

United States v Todd Corporation
900 F 2d 164, 165 (9th Cir.1990)... . vii-12
Universal Camera v NLRB
340 U.S 474 487 488 (1951..... . 24 -28
U.S vs G.L.C Restaurant Corporation 16
OCAHO Case No: 89100063 July 15,1992. -22-29
Unites States v Mesa Airlines
OCAHO Case 88200001-2 July 15,1989... 27-29
Wilcox v C.IR 848 F 2d 1007,1009 (9th
Cir. 1991)..... 4
Zipes v Trans World Airlines,Inc
455 U.S 385, 393 (1982)..... 27-29
Zeki Yeni Komsu, United States of Ameri-
ca v Mesa Airlines, Inc
OCAHO CASE No: 88200001-2 July 24,1989 27-29

STATUTES TITLES
UNITED STATES CODES

TITLE VII of the Civil Rights Act of 1964
(42 U.S.C 2000e..... 7-26
TITLE VII Sect 703 (a) (1) (2).....
8 U.S.C 274 a..... 5
8 U.S.C 1324b (a) (3) 15

8 U.S.C 1324b (i) (1)..... 1-4

8 U.S.C 1324b (a) (3) (B)..... 5-15

8 U.S.C 1324b (h)..... 22

8 U.S.C & 1101 (a) (22) 1982..... 5

8 U.S.C 1324b (g) (1) (3)..... vii

8 U.S.C 1324b..... 5-15-16-22

8 U.S.C A & 1101 et seq 5 U.S.A & 551 et seq..... 5-15

28 C.F.R & 44.101 (f)..... 26

28 C.F.R 68.38..... 3

28 C.F.R & 68.52 17

28 C.F.R & 44-201..... v-21-16

28 C.F.R 68.50 (c) (D) (V)..... 22

28 C.F.R 68.37(b) (1) vii-10

28 C.F.R IRCA'S Anti-discrimination Provision..... iv

RULES LAWS

Public Law No: 99-603-100 Statutes 3359

Immigration and Nationality Act & 101 et seq..... iv 12-15

SUPREME COURT RULES

Certiorari 10, 34, 39-3

SUPREME COURT JURISDICTION

28 U.S.C & 1251 3-4

REGULATIONS

53 Fed Reg. 15,904 May 1988..... 23

54 Fed Reg. 32,499 August 8, 1989 Final Agreemtnt..... 23

CIRCUIT RULE: 36-4 Request Publication.. 2

FRAP 38 3

OTHER JURISDICTION CODES

Bankruptcy Code Section 101 (5) (1) (2) 25

Greyhound Lines, Inc Bankruptcy Case 90-00986-B-11..... 6-25

G.L.I HOLDING COMPANY

Bankruptcy Case 90-01985-B-11 6-25

Bankruptcy Court Brownsville, Texas Order Liquidation for the 9th Circuit Court the Petitioners claims Docket 6892. 6871 April 29, 1993. 6

CONSTITUTION OF THE UNITED STATES

XIV XV Amendment..... 5

TABLE OF CONTAINS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEAL OF THE 9TH CIRCUIT..... 1

OPINION BELOW..... 1

JURISDICTION OF THE CASE

CONSTITUTIONAL AND STATORY PROVISIONS INVOKE 4-5

STATEMENT OF THE CASE 6

REASONS FOR GRANTING THE WRIT OF CERTIORARI 14

WRIT OF CERTIORARI IS NEEDED 18

ATTORNEY FEES 21

THE ARGUMENT..... 24

CONCLUSION..... 28

INDEX TO APPENDIX

Denial of Complainants Request for Administrative Review..... 0

Acknowledgement of Hearing..... 0-2

MEMORANDUM U.S COURT OF APPEALS A

U.S DEPARTMENT OF JUSTICE REQUEST PUBLICATION I

PETITION FOR REHEARING DENIED OCT 4,1993..... 0

PETITION FOR REHEARING DENIED I

MANDATE OCTOBER 12, 1993 I

UNITED STATES BANKRUPTCY COURT F

BEST AVAILABLE COPY

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

The Petitioners, Jaime Banuelos et al.. respectfully prays that a writ of certiorari be granted to review the judgment of the judgment base on the final decision of the Administrative Law Judge October 24,1990 affirmed by the United States Court of Appeals.

I OPINION BELOW

The Court of Appeals of the 9th Circuit entered its MEMORANDUM REVIEW August 18, 1993 case 91-70005 affirming the agency OCAHO case under its jurisdiction 8 U.S.C 1324b (i.) (1) and denied Petitioners and U.S Department of Justice Executive Office for Immigration Review of Office of the Chief Administrative Hearing Officer request for publication pursuant with Circuit Court Rule 36-4 of the Rules of the United States Court of Appeals for the Ninth Circuit Sep. 22, 1993.

The Court of Appeals also denied a PETITION OF REHEARING Oct. 4, 1993.

The Office of the Chief Administrative Hearing Officer denied Complainant Administrative and Judicial Review on November 2nd 1990 base in that has no jurisdiction however request for publication pursuant with Circuit Court 36-4 of the Rules of the United States Court of Appeals for the Ninth Circuit and stated its latest opinion. First, there appear to be little or no cicuit court case law holding that pro-se complainants in a case brought under section 1324b of Title 8 U.S Code, can be responsible for attorney fees when the complainants have attempted to bring the same claim repeatdly even-though its was found by the others courts and administrative tribunals to lack merit. Second, there is little, if any, circuit court case law affirming the findings of an administrative law judge that summary judgment is proper in a section 1324b case under disparate treatment theory, where the

complainants has failed to show that the non-discriminatory reason given for the employer' action is a mere pretex.

II SUMMARY DECISIONS

The 9th Circuit assume that the Administrative Law Judge properly denied Banuelos's Motion for summary decision under 28 C.F. R 68.38 base under affidavits of Richard Hirz identification numbers.

III AWARD OF ATTORNE'FEES

The 9th Circuit assume that the ALJ acted within his discretion Mitchell v Office of Los Angeles County, 805 F 2d 844,846 (9th Cir. 1986.

IV SANCTIONS FOR FRIVOLUUS APPEAL.

The Court of Appeals is reluctant to sanction pro -se litigants under Fe R APP 38 unless they appeal the same claims repeatdly

Wilcox v C.I.R 848 F 2d 1007, 1009 (9th Cir. 1991 their argument have been aquarely rejected by this court in prior decision Cook v Spilman 806 F 2d 948 949 (9th Cir. 1986) or they have used the Court for wholly inapropriate pursose, Bell v City of Kellogg 922 F 2d 1418 1425 (9th Cir. 1991)
None of these factors is present in this case and the 9th Circuit decline to award santions.

JURISDICTION OF THE CASE

9th Circuit Appeal 91-0005 enter MEMORANDUM 8/18/93. Rehearing FRAP 40 was denied Occover 4, 1993 and now is submitted timely at SUPREME COURT OF THE UNITED STATES PART III JURISDICTION ON WRIT OF CERTIORARI RULE 10, et seq..... and is invoke under Title 28 of the United States Code Section 1254 (1) within 90 days period allow in this case.

Petitioners 9th Circuit case jurisdiction enter as 8 U.S.C 1324b (iO (1) and in-

the Administrative Law Judge under OCAHO 89-200314 8 U.S.C 1324b (a) (3) (B) and 8 U.S C &1101 (a) (22) 1982) OCAHO 89200314 and was Appeal Case No; 91-70005 invoke under 8 U.S.C 1324b.

CONSTITUTIONAL PROVISIONS INVOKE

This is a Title 8 Section 1324b of the United States Code case of the original charge of 25 separated individuals former workers of GREYHOUND LINES, INC a case under Immigration Reform Control Act 1986, although related with Title VII civil Rights 1964, IRCA 1986 is a separted governed by its own statutes.

The Constitution of the United States protect Citizens rights and previledges. Petitioners invoke the constitution of the United States XIV and XV Amenament.

OTHER COURTS JURISDICTION

Bankruptcy Court in Brownsville, Texas under cases 90-01985 B-11 and 90-00986-B-11 issues its order against G.L.I HOLDING COMPANY and GREYHOUND LINES, INC a Delaware Corporation for the liquidation of claims in favor or Petitioners April 8, 1993 Hearing Docket No 6971 Bankruptcy Judge order liquidation of claims at the 9th Circuit.

STATEMENT OF THE CASE

Federal question jurisdiction.

Complainants are 25 separated individuals timely file an OCAHO case. Complainants alleged violation of section 1324b of Title 8 of the United States Code. The action below claimed discriminatory discharge, refusal to hire, a disparate treatment against citizens of U.S Unfair Immigration Related Employment Practice under Immigration Reform Control Act 1986 (IRCA 1986) enacted by Congress provision that add CITIZEN STATUS DISCRIMIN.-

TION on the Title VII of the Civil Rights Act of 1964 (42 U.S.C Section 2000e et seq) a subject within the exclusive jurisdiction of the federal court concerning an Appeal and a writ of certiorari.

Base on the Affidavit of Richard Hirz, Manager of payroll for Greyhound Lines, Inc the Administrative Law Judge found that a possible error may exist in (TLC) Transportation Leasing Company and (GLI) Greyhound Lines, Inc share of the same state identification 076-248-5 that is the identification of TLC a computer generated oversight as stated by Richard Hirz and supoorted by the ALJ and believe to be correct by the 9th Circuit as nothing to cast doubt on this findings Lowe v City of Monrovia, 775 F 2d 998, 1007 9th Cir. 1985 Summary judgment was call proper by the 9th Cir. base on Title VII disparate treatment theory if plaintiff fail to show non-discriminatory reason for employer's action is pretex The Chief Administrative Hearing Officer disa-

greed since under section 1324b there is any circuit court affirming ALJ Summary Decision

G.L.I base its whole Summary Decision on that was not the employer of the Petitioners this was a pretex used by GLI contrary to Richard Hirz affidavits and GLI own confession at the Bankruptcy Court document submitted that the real successor employer was Greyhound Lines, Inc a Delaware Corporation during the period of 1987. Pretex when the federal number stated by affidavits of Richard Hirz clerly state as 86-0572343 the same as Complainants 1987 employer.

Transportation Leasing Company (Formerly Greyhound Lines, Inc) base its Summary Decision in that was not the employer of the Complainants after the sale announced February 13, 1987 as such took place December 1986 When TLC told Complainants its plan to replace them with others across the border or undocumented workers.

On March 5, 1987 G.L.I Holding Company announced that it will not continue with Complainants work employment and will look for other alternatives and subsequently subcontract Complainants work to what it seems a formation agency franchise from the Greyhound Corporation now known as Dial Corporation thought its affiliated subsidiary Transportation Leasing Company. Other sections of Complainants work were not subcontracted as the stockroom lubrication and certain other maintenance service company not directly involve in the hiring of Complainants employment but interfering with Complainants work by letting Complainants be subject to a citizen status discriminatory policies through its service agencies GREYHOUND STATE ID 2465301 d.b.a Bortisser Travel Service, and successor Bus Wash, In and its successor at the present control by GLI.

Affidavits of Richard Hirz Manager of payroll for Greyhound Lines, Inc Delaware Corporation stated that Transportation Leasing Company share of the State identification number

86-0572343 is the correct ID for the New Greyhound federal number and this federal number is also Complainants W-2 Tax 1987 number (See O.R 1355 W-2 1987).

The 9th Circuit stated that the ALJ has authority to dismiss Bortisser Travel Service under 28 C.F.R 68.37(b) (1) such authority do not seems to exist at all beside Bortisser never answer the amended Complaint and was in default during all periods of the case.

Complainants enter motion for the Special Counsel (SC) to intervene concerning GREYHOUND STATE ID 2465301 d.b.a Bortisser Travel Service because Administrative Law Judge apparently threten Complainants if the case continue with Bortisser attorney fees wll be add to the issue. Complainants were justify to request the intervention of the Special Counsel in the case as IRCA allow the SC intervention any time and enjoy the inmunity against attorney fees.

However G.L.I HOLDING COMPANY, GREYHOUND LINES, INC a Delaware Corporation, GREYHOUND STATE ID 2465301 d.b.a Bortisser Travel Service and Bus Wash, Inc fail to appear at the evidentiary Hearing August 17, 1990 to clear the charges under IRCA 1986 Unfair Immigration Related Employment Practice they all lost technically and evidentially their case.

Substantial evidence was submitted by the acting Special Counsel Andrew Strojny letter FOIA July 5, 1989 where the Special Counsel reveal that from 27 names submitted employee hired instead of the Complainants none show any record at the Special Counsel as require by IRCA I-9 information and five (5) names were selected for litigation.

Substantial evidence was reveal at the evidentiary hearing August 17, 1990 stated by Victor Orozco a witness and Assistant Supervisor who declare that each and all new hiring instead of Complainants were illegal aliens or undocumented persons.

Bus Wash, Summary Decision was state . base in a confession that IRCA is believe only for the non-citizens and declare its policies of preference in non-citizens in Bus Wash, Inc hiring policies and erroneously cit U.S v Todd Corporation 900 F 2d 164, 165 (9th Cir. 1997) a wrong interpretation of U.S v Todd Corporation by stated a banckword interpretation of IRCA 1986.

Bus Wash, Inc allege audit of the Immigration and Naturalization Service (INS in 1990 reveal that from 100 employees hired instead of Complainants 57 were non-citizens and others pressume undocumented.

BACKGROUND ORGANIZATION AND PRESENTATION

Transportation Leasing Company (Formerly GREYHOUND LINES, INC is the successor in interest to GREYHOUND LINES, INC. TLC is the subsidiary of the Dial Corporation (Formerly THE GREYHOUND CORPORATION) GLI Holding was formed in 1986 in connection with the acquisition of the intercity bus business of the

Dial Corporation (TDC) formerly The Greyhound Corporation and the Greyhound DIAL Corporation.

GLI Holding Company has four wholly owned subsidiaries: GLI Bus Operations Holding Company (GLI Bus) Buslease, Inc (Buslease) T & V Holding Company (T & V Holding and GLI Food Service, Inc (GFSI) GLI Bus acquired Lines from TDC (The Dial Corporation) (The Lines acquisition) Lines is the largest intercity bus carrier in the United States.

GREYHOUND LINES, INC

The Company is wholly owned subsidiary of GLI Bus Operations Holding Company (GLI Holding Company (GLI Holding) In 1987, the Company was acquired from the Dial Corporation (TDC) Formerly the Greyhound Corporation and the Greyhound Dial Corporation) in a leveraged buyout transaction (The Greyhound Acquisition until the Bankruptcy case 90-0985-B-11. Under the plan of re-organization that was confirmed and finally approved GLI became the prin-

cipal operating entity,GLI Holding merged with into a wholly owned subsidiary of GLI, with GLI Holding as the surviving corporation.

Transportation Leasing Company became the business parner of GLI and G.L.I Holding Company by being a major contributor in forming the new Greyhound Lines, Inc stock investor and also TLC Dial Corp."Old Greyhound was the former employer of the Petitioners until approximately December 1986 at the time the Immigration Reform Control Act was enacted November 6,1986 The Greyhound Corporation and TLC its subsidiary may be responsible in forming GREYHOUND State ID 2465301 d.b.a Bortisser and Bus Wash,Inc the agencies serving GLI only and any other agency as reported September 20, 1993.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

Writ of certiorari should be granted in this case because the Decision of the Court of Appeals for the 9th Circuit seems inconsistent or avoid confrontation with the Agency decid-

ing an IRCA CASE NOT UNDER THE IRCA INTERPRETATION as reasonable basis in Law or within an area of regulations committed to it by congress in enacting IRCA 1986. NLRB v Insurance Agents International Union 361 U.S 477 (1960) Public Law No: 99-603-100 Statutes 3359. Immigration and Nationality Act § 101 et seq as amended 8 U.S.C.A § 1101 et seq. 5 U.S.A § 551 et seq.

A federal question before the Ninth Circuit and lower Court or Agent Administrative Law Judge representing the Office of the Chief Administrative Hearing Officer under Immigration Reform Control Act has not been settled by the United States Supreme Court a QUESTION UNDER UNFAIR IMMIGRATION RELATED EMPLOYMENT PRACTICE 8 U.S.C 1324b CITIZEN STATUS 8 U.S.C 1324b (a) (3) 8 U.S.C 1324b (a) (3)(B) 8 U.S.C § 1101(a) (22) 1982) since ESPINOZA V FARAH Mfg 1973 414 U.S 86, 38L Ed 287, 94 S Ct 334

A federal question before the 9th Circuit on atterney fees an IRCA case section of 8 U.S C 1324b is in conflict with OCAHO opinion Sep-

tember 1, 1993 Request Publication or is a defensive action and intimidation against the victims of an Unfair Immigration Related Employment Practice under 28 C.F.R § 44.201 intimidation and retaliation conflicting with other OCAHO cases decide under IRCA 8 U.S.C 1324b Attorney fees Equal Access to Justice Act fee shifting principles as applied to IRCA is only informative U.S vs G.L.C Restaurant Corp OCAHO Case No: 89100063 July 15, 1992. Regulations related to attorney fees is only an statutory language and do not expand upon the meaning of the prevailing party.

UNIFORMITY WITH IRCA CASES FOR A NATIONAL APPLICATION AND FINAL RULE AT THE SUPREME COURT

A federal question before the Ninth Circuit and the Action of the Agency OCAHO-ADMINISTRATIVE HEARING OFFICER(CAHO) Request for publication Circuit Court Rule 36-4 Rules of the United States Court of Appeals for the Ninth September 1, 1993. The Special Counsel submission of a substantial evidence July 5, 1999

FOIA letter to Complainant. The Immigration and Naturalization Services audits of February 1990 concerning the hiring of all other with different citizens status than the Complainants citizens, intendent citizens of the United States and all other cases decide conflicting with the terms issues of the Administrative Law Judge in this case 89200 314 and the opinion of the 9th Circuit affirming the ALJ decision instead of reviewing the case under the standard of review which is reviewing the late opinion of the CAHO when Complainant submitted their Motion for a judicial and administrative Review 28 C.F.R 68.52 denied November 2nd 1990 on the grounds of no jurisdiction.

A federal question before the Ninth Circuit concerning this paucity case in law is its exeptional importance for the uniformity with IRCA Cases and its interpretation in accordance with congress enactment of IRCA a national application of a rule that

need national uniformity and final rule at the SUPREME COURT to unfeld the Frank Amentment Immigratien Reform and Centrel Act of 1986. Kebdish The Frank Amendment to the Immigratien Refera and Centrel Act of 1986 A Labyrinth fer Labor Law Litigaters 41 Southwestern L J 667 (1987)

A Federal questien before the Ninth Circuit has net been consider an IRCA case of extraerdinary impertance for all Americans and sheuld be consider at the SUPREME COURT fer a writ of certierari. IRCA is need fer future events to come Free trade with Mexico Canada and the U.S werk force of the future citizens rights.

WRIT OF CERTIORARI IS NEEDED

A federal questien before the Ninth Circuit and lewer agency er court which include A LJ FINAL DECISION October 24, 1990 involves a questien of paucity and an exceptional impertance fer the unifermity of IRCA 1986 fer a natienal applicatien or rule that

need national uniformity and final rule at the SUPREME COURT where the issues presented for review at the 9th circuit seems overlooked or misapprehende the inquiry into whether OCAHO and ALJ FINAL DECISION HAD A REASONABLE BASIS IN LAW WITHIN AN AREA OF REGULATIONS COMMITTED to it by Congress and whether OCAHO properly applied the correct legal standard of rewiew NLRB v Insurance Agents International Unien 36 1 U.S 477 (1960) writ of certierari is needed for justice and peace and fer the Immigration Reform Control Act 1986 and its effects in the American Society since histery treat of GUADALUPE HIDALGO given equal rights fer Mexican Americans.

While the SUPREME COURT in Espineza v Farah Mfg 414 U.S 86 1973 decline to decide the question of whether the Civil Rights Acts prohibit discrimination by a private employer on the basis of citizenship lewer court subsequent decisions have split on the issue. Thomas v Thomas v Rehner Ghering & Co. 582 F Supp 669, 672 73 (W.D Yll 1984)

claims of alienage discrimination may be available under section 1981 Ries v Marshall 530 F Supp 351, 360-61 (S.D.N.Y 1981)

The writ of certierari here is to review Department of Justice OCAHO opinion or latest decision

FIRST, There appear to be little or no Circuit Court case law holding that Pro-se Complainants in a case brought under section 1324b of Title 8 U.S Code, can be held responsible for attorneys fees when the Complainant have attempted to bring the same claim repeatedly even though it was found by other court and Administrative Tribunals to lack merit although IRCA allow a repeat charge at other forums for the 180 days period telling statutes of limitations.

SECOND, there is little, if any, curcuit court case law affirming the findings of an Administrative Law Judge that Summary Judgment is proper in a section 1324 case under disparate treatment theory, where the com-

plaint has failed to show that the nondiscriminatory reason given for employer's action is a mere pretex, signed by Jack E Perkins Chief Administrative Hearing Officer.

ATTORNEY FEES GRANTED BY ALJ MAY CONFLICT IRCA 1986 PRO-SE COMPLAINANTS AND 9TH CIRCUIT STANDING MAY CONFLICT WITH IRCA 28 C.F.R & 44-201

The Chief Administrative Hearing Officer requested a clarification of the 9th Circuit opinion through Rule 36-4 of the Rules of the United States. CAHO Request for Publication was denied Sep. 22, 1993.

FIRST, There appear to be little or no circuit court case law holding that PRO SE Complainants in a case brought under section 1324b Title 8 U.S Code, can be held responsible for attorney fees whon the Complainants have attempted to bring the same claim repeatedly, even though its was found by other court and administrative tribunal te lack merit.

SECOND, ALJ discussion of the prevailing party in context of equal access to justice act fee shifting principles as applied to cases under 8 U.S.C & 1324b is only 'informative U.S v G.L.C Restaurant Corporation OCAHO 89100063 July 15, 1992 and even in cases of charges without foundation attorney fees can not be implemented Bethishou v Ohmite Manufacturing OCAHO Case 8900175 August 2, 1989 and other cases as Salermo Stephen J v ICL Retail Systems, Inc OCAHO 92B00-041 Motion for Attorney's Fees file in accordance with the provision of 8 U.S.C & 1324b (h) and 28 C.F.R 68.50 (c)(D) (v) were denied as in this case Salermo was told that he will be replace by a Canadian instead of U.S Citizen here Complainants were told the same that they will be replaced by others across the border and materialized. Preiter 44 FEP at 1003, Cit Douglas v Anderson 656 F 2d 528 531 (9th Cir. 1981)

THIRD, The Office of the Special Counsel(OSC) and the EEOC Equal Employment Opportunity Commission which enforces Title VII Claims created to enforce the anti-discrimination provision of IRCA 1986 to appoint each other for the purpose of receiveing discriminatory charges 53 Fed Reg. 15, 904 May 1988 54 Fed. Reg, 32,499 August 8, 1989 Final Agreement to bring the same claim to this tribunals and administrative tribunals NLRB by Complainants.

The financial affidavits of Complainants demostrated the lack of resources due to the action of the employer termination and interference in Complainants work activity. The lack of English Communication skill of this citizens do not merit to impose attorney fees Aranka M Palancz v Cedar Medical Center OCAHO 91200197 (August 3, 1991)

The Special Counsel Andrew Strojny found that from 27 names submitted for investigation on new hirings instead of Complainants they do not preseted documentation as require

by IRCA 1986 and 5 were selected for ligation a substantial evidence Maka v Immigration & Naturalization Service 904 F 2d 1351 1355 9th circuit 1990. Texas Dept of Community Affair v Burdine, 450 U.S 248 (1981) Universal Camara v NLRB 340 U.S 474 487 488 (1951)

THE ARGUMENT

The Dial Corporation(Formerly the GREYHOUND and its subsidiary GREYHOUND LINES,INC that change also its name Transportation Leasing Company are major stockholders in the NEW GREYHOUND LINES, INC that apparently form the agence GREYHOUND STATE ID 2465301 and Bus Wash, Inc.

Affidavits of Richard Hirz Manager of Payroll for Greyhound Lines, Inc clearly stated its correct federal identification number 86 0572343 and this is the same federal number use by the Complainants 1040 Federal Income-Tax of 1987 Maka v Immigration & Naturalization Service 904 F 2d 1351 1355 (9th Cir.1990)

Bortisser Travel Service was declare by the Employment Development Department as same as GREYHOUND STATE ID 2465301 and as appear the same GREYHOUND Complainants work for more than 20 years. Nothing to cast doubt on this findings Lowe v City of Monrovia 77 5 F 2d 998, 1007 (9th Cir. 1985)

GREYHOUND LINES,INC and G.L.I HOLDING COMPANY agree to abide by the Bankruptcy plan of re-organization Bankruptcy Code 101 (5) base in this case for the liquidation of the Petitioners claims at Brownsville Texas cases 90-01985-B-11 and 90-00986 B- 11

Under the Immigration Reform Control Act a Prima Facie exist Alvarez R John v Interstate Highway Construction OCAHO case OCAHO 91200149 SUPREME COURT in McDonnell Douglas set forth a model established a Prima facie of case disparte treatment as state in this case by 9th Cir. MEMORANDUM August 18, 1993. However the 9th Circuit reviewing of the case applied Title VII dis-

parate treatment pretextual conditions instead of applying IRCA own statutes. However IRCA may take support from others cases as the require motive or intent can be inferred from the mere existence of diffrence. Colby v J.C Penney Co.Inc 811 F 2d 1492 (9th Cir. 1983) Cert. Denied 467 U.S 1255 (1984) League of United Latin American Citizens v Pasadena Independent School District. 662 F Supp. 443 449 n 6 S.D Texas 1987.

The term ENTITY means any legal entity, including but not limit to, a corporation parnership, joint venture, governmental body, agency IRCA can treat employer as independent entity or as the same entity. 28 C.F.R 274 a 44.101 f

Under analogous Title VII the court recognized that separated corporated entities may be treated as one employer Baker v Stuart Broadcast Co. 560 F 2d 389 (8th Cir. 1977 and a main control Trevino v Celanese Corp. 701 F 2d 397, 403 (5th Cir. 1983) and this may be the case in the join venture TLC-GLI Bortisser and Bus Wash

Complainants case was rule timely by the Office of the Chief Administrative Hearing Officer, the administrative law judge rule this case timely and within the 180 days require by IRCA when Complainants file EEOC CHARGES. Complainants are also timely under a Patter or Practice theory.Complainants fallow the analysis of United States Mesa Airlines OCAHO Case 88200001-2 Ziki Yeni Komsu, United States v Mesa Airlines. Zipes v Trans World Airlines, Inc 455 U.S 385 393(1982)

Complainants were more qualify than others non-citizens and undocumented replacing the Complainants Adams v Reed, 567 F 2d 1283-87 16 FEP 1040 1042(5th Cir. 1978 Complainants qualify for an equitable tolling with their EEOC charges within 180 days period as in Mesa Airlines analysis.

CONCLUSION

Did the 9th Circuit render an opinion in conflict with Supreme Court Review Universal Camara v NLRB 340 U.S 474-487 488 (1951)Did the Appeal Court of the 9th Circuit render an opinion without consider substantial evidence Maka v Immigration & Naturalization Service 904 F 2d 1351 1355 (9th Cir. 1990) Martinez Rosita U.S v Marcel Watch Corporation OCAHO case 89200085 March 22, 1990. Conflicted with the interpretation of IRCA in Kobdish The Frank Amendment to the Immigration Reform and Control Act of 1986 A Labyrinth for Labor Law Litigators 41 South Western L.J 667, 691 1987) Natividad Adame Gomez, United States of America Inc d.b.a Casa Jose Cafe Texas Corporation OCAHO No: 92B00162 NLRB v Insurance Agents Internationl Union 361 U.S 477 (1960) Salermo v ICL Retail Systems, Inc OCAHO 92B00041 Sep 17, 1992. Bethishou v Chmite Manufacturing OCAHO Case 8900175 August 2, 1989.

Enrique and Merlinda Martinez d.b.a Enrique's Restaurant v U.S Dept of Justice OCAHO on petition for Review Case 91-4792(5th Cir. 1992) Aranka M Palancz v Cedar Medical Center OCAHO Case 91200197 August 3, 1992. Alvarez R John v Interstate Highway Construction OCAHO Case No. 91200149. Espinoza v Fara Mfg 414 U.S 86 (1973) 38L Ed 287, 94 Ct 334, League of United Latin American Citizens v Pasadena Independent School District 662 F Supp.443,449 n 6 (S.D Texas 1987) McDonnel Douglas Corp v Green 411 U.S 792 36 L Ed 2d 668,93 Ct 1817 1973 Texas Dept of Community Affairs v Burdine 450 U.S 248 (1981) U.S vs G.L.C Restaurant corporation OCAHO Case No: 89100063 July 15, 1992 United States v Mesa Airlines OCAHO case 88200001 - 2

Bankruptcy Court at Brownsville Texas has order the liquidations of the claims base on this action at any other forum and the 9th Cir April 29, 1993.

That the Supreme Court order the proper review or modify the 9th Circuit Review in that review an IRCA case is reviewing the lates decision of the CHIEF ADMINISTRATIVE HEARING OFFICER AND NOT THE EARLY DECISION OF THE ADMINISTRATIVE LAW JUDGE FINAL DECISION Oct 24, 1990 instead of the DENIAL OF COMPLAINANT'S REQUEST FOR ADMINISTRATIVE REVIEW November 2nd 1990 or the lates opinion concerning publication of the MEMORANDUM 9th Circuit opinion September 1, 1993.

That the SUPREME COURT overturn or modify the 9th Circuit Court of Appeal opinion or MEMORANDUM apparently base on TITLE VII and not in IRCA 1986 statutes in what appear de Novo decision.

Respondent to cease and desist threaten issues on attorney fees to the victims of an Unfair Immigration Related Employment Practice to the Parties in interest cease and desist citizens discriminatory policies.. Rehirement, back pay should be establish since 1987 or liquidation of the Bankruptcy Claims.

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UNITED STATES DEPARTMENT OF JUSTICE

JAIME BANUELOS et al)

Complainants) 8 U.S.C 1324b

v)

TRANSPORTATION LEASING CO. et al.....) Case No. 89200314

Respondents)

DENIAL OF COMPLAINANTS REQUEST

ADMINISTRATIVE REVIEW.

On July 1989, Complainants file a complaint with the Office of the Chief Administrative Hearing Officer(hereinafter OCAHO) against the above named Respondents. On August 23 1989 OCAHO received an Amended Complaint from Complainants. The Amended Complaint charged Respondents with unfair immigration related employment practices based upon citizenship status pursuant to 8 U.S.C & 1324b. On October 24, 1990, the Administrative Law Judge assigned to this case, Robert B Schneider, issued the Final Decision and Order in this case. The order denied the Complainat's

Motion For Summary Decision, granted Respon dent G.L.I's and Transportation Leasing Company's Motion for Summary Decision and granted attorney's fees to Respondents G.L.I and Transportation Leasing Company. On November 1, 1990 OCAHO received a Request for Review from Complainants. Pursuant to 8 U.S.C 1324b (i(1), a person aggrieved by a final order may seek review of such an order in the United States Court of appeals for the circuit in which the violation is alleged to have occured or in which the employer resides or transacts business. Accordingly, The Chief Administrative Hearing Officer hereby denies the Complainants. request for an administrative review.

So ORDERED THIS 2nd day of November, 1990

Jack E Perkins
Chief Administrative
Hearing Officer.

OFFICE OF THE CLERK

UNITED STATES COURT OF APPEALS FOR THE

9th CIRCUIT

ACKNOWLEDGEMENT OF HEARING NOTICE

ATTN: CALENDAR CLERK DATE August 3, 1993

CASE NO:91-70005

TITLE JAIME BANUELS et al v Dept of Justice
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
et al TLC et al GREYHOUND LINES, INC
et al

ASSIGNED FOR HEARING

DATE August 3, 1993 TIME 9:00 COURT ROOM 1

LOCATION TIME ALLOTED

COUNSEL TO ARGUE NAME BANUELOS et al

STREET ADDRESS

CITY, STATE, ZIP

PHONE:

PARTY (S) REPRESENTD

NOTE IN THE EVENT THAT ARGUMENT IS TO BE PRE-
SENTED IN PRO PER PLEASE PLACE PARTY'S NAME,
ADDRESS AND TELEPHONE NUMBER IN THE SPACE PRO-

VIDED FOR ATTORNEY/COUNSEL

ADMISSION STATUS

TO BE COMPLETED BY ATTORNEY'S ONLY

( ) ICERTIFY THAT I AM ADMITTED TO PRACTICE BEFORE THE BAR OF THE 9TH CIRCUIT AND THAT I WILL IMMEDIATELY APPLY FOR ADMISSION UPON RECEIPT OF THIS ACKNOWLEDGEMENT OF HEARING NOTICE.

DATE SIGNATURE

SOCIAL SECURITY NUMBER

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAIME BANUELOS et al Petitioners	)	
	)	No. 91-70005
UNITED STATES DEPARTMENT OF JUSTICE et al Respondent	)	OCAHO CASE NO: 89200314
TRANSPORTATION LEASING COMPANY et al.... Real Parties in in interest	)	MEMORANDUM

Appeal from the Department of Justice

Submitted August 3, 1993

Pasadena, California

This disposition is not appropriate for publication and may not be cited to or for the courts of this circuit except as provided by 9th Cir. R 36-3

The panel finds this case appropriate for submission without oral argument pursuant to 9th Cir. R 34-4 and Fed R App P 34(a)

APPENDIX A

Before: BROWNING, FARRIS, and KELLY, Circuit Judges.

The parties are familiar with the facts and issues and we will not restate them here.

I. DISMISSAL OF COMPLAINT

The ALJ's dismissal of Banuelos's c claim against Bortisser was proper. The only allegations against Bortisser were that it 1) hired only some of the Complainats and paid them less than what they received as Old Greyhound employees and 2) terminated all workers hired under the contract with GLI when that contract ended in 1988. Banuelos claimed these actions were discriminatory because Bortisser's employment decisions were controlled by Banuelos's former Old Greyhound supervisor, who he believe did not want to employ U.S citizens. However the complaint did not allege any facts to support this reasoning or to suggest in any other way that Bortisser's employment decisions were based on citizensnip.

The ALJ ordered Banuelos pursuant to 28 C.F.R 68.21 to plead the legal and factual bases of his claim against Bortisser with greater specificity. Banuelos failed to comply with this order. The ALJ had authority under 28 C.F.R & 68.37(b) (1) to dismiss the complaint for failure to adequately state a claim.

II SUMMARY DECISIONS

The ALJ properly denied Banuelos's motion for summary decision and entered summary decisions for TLC, GLI and Bus Wash, under 28 C.F R & 68.38 Banuelos rested his entire claim on the theory that the sale of assets to GLI was a "sham transaction. His only evidence offered to support this theory was the fact that TLC and GLI shared the same California tax employer number. However, based on the affidavit of Richard Hirz, Manager of Payrolls for Greyhound Lines, Inc., the ALJ found the use of the same number resulted from a "computer generated oversight and there is nothing to

cast doubt on this finding. See Lowe v City of Monrovia, 775 F 2d 998, 1007 (9th Cir. 1985) (summary judgment proper under Title VII disparate treatment theory if plaintiff fails to show nondiscriminatory reason for employer's action is pretext)

III AWARD OF ATTORNEY'S FEES

The ALJ acted within his discretion, Mitchell v Office of Los Angeles County 805 F 2d 844, 846 (9th Cir. 1986), in awarding attorney fees to TLC and GLI on the grounds that 1) Banuelos's claim was unreasonable, without foundation and unsupported by any credible evidence, Christianburg Garment Co. v EEOC 434 U.S 412, 421 op 14975, 14983 (9th Cir. December 21 1992) and 2) Banuelos attempted to bring the same claim repeatedly even though it was found by other courts and administrative tribunals to lack merit Miller v Los Angeles County Bd of Educ., 827 F 2d 617, 620 (9th Cir. 1987)

IV SANCTIONS FOR FRIVOLOUS APPEAL

This court is reluctant to sanction pro-se litigants under Fed. R App. P 38 unless they appeal the same claims repeatedly Wilcox v C.I.R 848 F 2d 1007, 1009 (9th Cir. 1991,) their arguments have been squarely rejected by this court in prior decisions, Cook v Spilman 806 F 2d 948,949 (9th Cir. 1986) or they have used the courts for a wholly inappropriate pursose, Bell v City of Kellogg, 922 F 2d 1418, 1425 (9th Cir. 1991) None of these facters is present in this case and we decline to award sanctions.

AFFIRMED

U.S DEPARTMENT OF JUSTICE

EXECUTIVE OFFICE FOR IMMIGRA

TION REVIEW

OFFICE OF THE CHIEF ADMINISTRA-

TIVE HEARING OFFICER

Chief Administrative Hearing Officer

5107 Leesburg Pike, Suite

2519

Falls Church, VA 22041

September 1, 1993

Ms Cathy A Catterson

Clerk

United States Court of Appeals for the Ninth Circuit P.O Box 547 San Francisco, CA 80294

San Francisco, CA 80294

Dear Ms Catterson:

Pursuant to Circuit Court Rule 36-4 of the Rules of the United States Court of Appeals for the Ninth Circuit, I hereby request publication of the Court's decision in Banuelos et al v United States Department of Justice, Executive Office of Immigration Re-

view. Office or the Chief Administrative Hear ing Officer and Transportation Leasing Co. et al Case 91-7005.

I request publication for the following reasons. First, there appears to be little or no circuit court case law holding that pro-se complainants have attempted to bring the same claim repeatedly,even though it was found by other courts and administrative tribunals to lack merit. Second, there is little, it any, circuit court case law affirming the findings of an administrative law judge that summary judgment is proper in a section 1324b case under disparate treatment theory, where the complainant has failed to show that the nondiscriminatory reason given for the employer's action is a mere pretext.

We thank you for your consideration in this matter. Sincerely

Jack E Perkins

Chief Administrative
Hearing Officer

APPENDIX B-2

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAIME BANUELOS et al	)	FILE
	)	Sep 22 1993
Petitioners	)	No. 91-70005
v	)	OCAHO Case No.
UNITED STATES DEPARTMENT OF JUSTICE et al...	)	89200314
Respondent	)	
TRANSPORTATION LEASING COMPANY et al....	)	ORDER
Real Parties in interest	)	

Before BROWNING, FARRIS, and KELLY, Circuit Judges

The request for publication is denied.

Honorable Paul J Kelly Jr., Circuit Judge, United States Court of Appeals for the Tenth Circuit, sitting by designation.

APPENDIX C

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAIME BANUELOS et al Petitioners v UNITED STATES DEPARTMENT OF JUSTICE et al.. Respondent TRANSPORTATION LEASING COMPANY et al Real Parties in interest	)	FILE OCT 4 1993 CATHY A CATHERSON CLERK U.S COURT OF APPEALS No. 91-70005 OCAHO Case No. 89200314

ORDER

Before: BROWNING, FARRIS, and KELLY, Circuit Judges.

The petition for rehearing is denied Honorable Paul J Kelly, Jr. Circuit Judge, United States Court of Appeals for tne Tentn Circuit sitting by aesignation

APPENDIX D

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

OCT 12, 1993

NO. 91-70005

MANDATE

CT AG#: 89200314

ISSUE

JAIME BANUELOS, et al..

Petitioners

v

UNITED STATES DEPARTMENT OF JUSTICE EXECUTIVE OFFICE OF IMMIGRATION REVIEW; OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

Respondent

TRANSPORTATION LEASING COMPANY(FORMERLY GREYHOUND LINES INC) et al

Real Parties in Interest

Appeal from the UNITED STATES DEPARTMENT OF JUSTICE

THIS CAUSE Came on to be heard on the Transcript of the Record from the Executive Office of Immigration Review and was duly submitted On CONSIDERATION WHSREOF, It is now

APPENDIX E

here ordered and adjudged by this Court, that the Decision of the said UNITED STATES DEPARTMENT OF JUSTICE in this cause be, and hereb is AFFIRMED

File and entered: August 18, 1993

A TRUE COPY

ATTEST OCT 12 1993

CATHY A CATTERSON

Clerk of Court

by Juanja Ross

Deputy Clerk

APPENDIX E-2

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF TEXAS

BROWNSVILLE DIVISION

MAR 11 1993

MICHAEL N MILBY.CLERK

IN RE: GREYHOUND LINES, INC et al	)CASE NOS 90-000985-B 11) JOINTLY ADMINISTERED
DEBTORS	)CASE NO 90-00985-B-11

ORDER GRANTING DEBTORS MOTION TO LIFT STAY TO CLAIMS OF JAMIE BANUELOS et al...

The Court having considered the Debtors Motion to Lift Stay to Claims of Jamie Banuelos et al (the Motion) finds that the Motion has merit and should be granted It is therefore,

1. ORDERED that the automatic stay is lifted as to the claimants listed on Exhibit A to the Motion (the Claimants) to proceed under non-bankruptcy law in the appropriate non-bankruptcy forum to liquidate their claims

If any, against the Debtors estates; it is further.

Debtors Gover, Constant Skaggs Banuelos et al
UST DOCKET 6892

2. ORDERED that any Claim of the Claimants determined in any non-bankruptcy forum shall be treated and satisfied only in accordance with the Debtors's Third Amended Plan of Reorganization for Greyhound Lines, Inc and its Affiliated Debtors

SIGNED Mar 09 1993 1993

RICHARD S SCHMIDT
UNITED STATES BANKRUPTCY
JUDGE

EXHIBIT A

CLAIMANT	CLAIM NUMBER	
	GLI HOLDING	GLI
1) Adam Espinoza	00021.00	
2) Jaime Banuelos	00029.00	016361.00
3) Bertha Andrade	00023.00	016360.00
4) Jesus Navarro	00026.00	
5) Frank Huizar	00022.00	013303.00
6) Jaime Barrietos	00042.00	016362.00
7) Juan Galindo	00044.00	
8) Lorenzo Gonzalez	0033.00	
9) Manuela Garcia	00024.00	015547.00
10) Marco T Centeno	00025.00	016888.00
12) Maria de los Angeles Casas		
13) Rafael Hernand	00020.00	013689.00
14) Samuel A Rodriguez	00028.00	015854.00
15) Tomas J Jimenez.....	00037.00	014717.00
16. Victor Lopez	00039.00	015570.00
17. Victor Orozco	00019.00	
18. Ramon Valdez		015564.00
19. Humberto Lopez		015569.00

IN THE

SUPREME COURT OF THE UNITED STATES

No._____

PROOF of SERVICE

I Paulita Bolton do declare that I am over 18 years of age and not a party of this action and pursuant to Rule 29.3 serve the within PETITION FOR CERTIORARI under Rule 33 to all parties as schedule attached.

and depositing same in the United States mail at Monterey Park California on about November 1993.

Paulita Bolton
730 W Graves Ave
Monterey Park, CA
91754.

SERVICE LIST

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Chief Administrative Hearing Officer
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GREGORY KENNEDY, Esquire
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COUNSEL OF BORTISSER TRAVEL SERVICE

ADMINISTRATIVE LAW JUDGE
Honorable Robert B Schneider
Administrative Law Judge
950 6th Ave Suite 401
San Diego CA 92101

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK

1 FIRST STREET N.E WASHINGTON D.C 20543

IN THE

SUPREME COURT OF THE UNITED STATES

No._____

PROOF of SERVICE

I Paulita Bolton do declare that I am over 18 years of age and not a party of this action and pursuant to Rule 29.3 serve the within PETITION FOR CERTIORARI under Rule 33 to all parties as schedule attached.

and depositing same in the United States mail at Monterey Park California on about November 23, 1993.

Paulita Bolton

Paulita Bolton
730 W Graves Ave
Monterey Park. CA

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES } SS.

On NOVEMBER 23, 1993 before me, the undersigned, a Notary Public in and for said personally appeared BOLTON DE CENTENO, PAULITA S

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Wasilik Klimenko

OFFICIAL SEAL
Wasilik Klimenko
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My Comm. Expires Aug. 2, 1995

(This area for official seal)